IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court No.3

Criminal Revision No. 78 of 2002

Sah Mohammad ….Revisionist.

Vs.

Smt. Gulshan Bahar and two others …Respondents.

Hon'ble Irshad Hussain, J.

Heard Sri Hari Mohan Bhatia in brief for Sri Vinod Sharma learned counsel for the revisionist. None appear for the respondents.

2- This criminal revision is directed against the judgment and order dated 27-6-2002 passed by the Principal Judge, Family Court, Dehradun whereby the application under section 125 of the Code of Criminal Procedure preferred by the wife and the two children (respondents) was allowed and the respondents were awarded maintenance allowance at the rate of Rs. 500/- each.

3- The learned counsel for the revisionist submitted that the impugned judgment and order is exparte although this has not been mentioned in the operative part of the judgment. Having gone through the impugned judgment it is evident that the revisionist-husband filed written statement but thereafter did not participate in the proceedings for some reasons. His evidence was also therefore not recorded in the case before the learned Principal Judge. The case was decided on the basis of the evidence of the respondents and therefore it is evidence that the decision against the revisionist is exparte. It will be just and proper that the revisionist may be directed to resort to legal proceedings before the learned Principal Judge by way of filing application under Order 9 Rule 13 C.P.C. for setting aside the exparte judgment and order and which shall be heard and decided on merit by the learned Judge. Considering this aspect the revisional jurisdiction can not be exercised to assess the propriety of the judgment and order in question.

4- In view of above the revision is disposed of with the direction that the revisionist-husband shall prefer an application under Order 9 Rule 13 C.P.C. before the learned Principal Judge, Family Court, Dehradun and the same shall

be disposed of on merit after giving an opportunity to the respondents to file objection against the same. It is also directed that till the disposal of the application to be preferred the revisionist shall pay a sum of Rs. 1000/- (one thousand) per month is lump sum as interim maintenance allowance to the three respondents.

(Irshad Hussain, J.)

Dt. 10-11-03

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